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OCT 05 2004

In re Application of
Richard Caso and Brand Caso
Application No. 10/686,757
Filed: October 15, 2003
Attorney Docket No. Caso.R-01

**OFFICE OF PETITIONS
ON PETITION**

This is a decision on the petition filed May 20, 2004, to establish that page 14 of the specification and Figure 1 and 2 of the drawings were part of the originally filed application. The Office is also treating the paper as a petition to establish that page 1 of the specification, and an abstract were part of the originally filed application.

The petition is **granted**.

On October 15, 2003, the application was filed.

The Office subsequently returned a postcard to applicant verifying the receipt of 20 pages of "Specification, Claims, and Abstract" and 3 sheets of "Formal Drawings."¹

Prior to scanning the papers for the creation of the electronic file wrapper, an employee at the Office completed a form which stating that 14 pages of specification, 5 pages of claims, 1 page of abstract, and 7 pages of drawings were present.

The electronic file wrapper contains 12 pages of specification - pages 2-13. The Office presumes page 1 was a cover sheet. The electronic file wrapper contains 5 pages of claims. The electronic file wrapper does not contain an abstract. The electronic file wrapper only contain 2 pages of drawings which include Figures 3-8.

Consideration of *both* the postcard receipt and the pre-scanning notes indicates the Office received the following papers on May 20, 2004:

- (1) a page (page 14) which included claims 1, 2, and 3,
- (2) a page of abstract,
- (3) a page 1 of the specification (presumably a cover page),
- (4) a page of drawings including Figures 1 and 2.

The evidence establishes the above listed papers were misplaced by the Office subsequent to the filing of the application.

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

Since a copy of page 1 has not been submitted, the Office cannot process the application using that page. *If* petitioner desires for that page to be part of the application, a new petition should be filed along with a copy of page 1.

A refund of the \$130 petition fee to petitioner's credit card will be scheduled.

The Notice mailed was sent in error and is hereby vacated to the extent it indicates page 14 of the specification and Figures 1 and 2 were missing.

The Notice required the submission of a signed oath or declaration. The postcard appears to indicate a signed declaration was filed with the original application. However petitioner does not explicitly address the issue and a copy of the original declaration has not been submitted. A new declaration has been submitted. Since the first declaration of record, the new declaration, was filed after the filing date of the application, the \$65 surcharge has been charged to petitioner's credit card.

The Office of Initial Patent Examination will be notified to for further process the application with a filing date of October 15, 2003, using the application papers filed on October 15, 2003, and the copy of the page containing claims 1, 2, and 3, the drawing page containing Figures 1 and 2, and one page of abstract filed on May 20, 2004.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



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Office of Petitions